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Federal Communications Commission

DA 93-1307

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

Nov 15

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MM Docket No. 93-284 ✓

DISPATCHED BY

In the Matter of

Amendment of Section 73.202(b), RM-8375
Table of Allotments,
FM Broadcast Stations.
(Woodville, Mississippi and
Clayton, Louisiana)

NOTICE OF PROPOSED RULE MAKING

Adopted: October 29, 1993; Released: November 12, 1993

Comment Date: January 3, 1994

Reply Comment Date: January 18, 1994

By the Assistant Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by PDB Broadcasting ("petitioner"), requesting the substitution of Channel 299C3 for Channel 299A at Woodville, Mississippi, and deletion of vacant Channel 300A at Clayton, Louisiana. Petitioner also requests modification of its construction permit (BPH-890712MH) for Channel 299A to specify operation on Channel 299C3. Petitioner submitted information in support of the proposal and expressed an intention to apply for the channel, if allotted.¹

2. We believe petitioner's proposal warrants consideration because the proposed substitution would provide Woodville and the surrounding area with expanded service. Channel 299C3 can be allotted to Woodville, Mississippi, in compliance with the Commission's spacing requirements provided Channel 300A is deleted at Clayton, Louisiana.² We shall also propose to modify the construction permit for Channel 299A to specify operation on Channel 299C3 in accordance with Section 1.420(g) of the Commission's Rules.

3. We shall also seek comments as to whether we should delete Channel 300A at Clayton, Louisiana, to accommodate the upgrade at Woodville. Channel 300A was allotted to Clayton in MM Docket 91-247. See 6 FCC Rcd (1991). A filing window for Channel 300A was opened on January 14, 1992, and closed on February 13, 1992. The channel is

vacant with no applications on file. If an application is filed during the comment cycle in this proceeding, the channel would be retained at Clayton, and no further consideration would be given to the proposed allotment of Channel 299C3 at Woodville. It is Commission policy not to delete a channel in which interest has been expressed, or, in this case, for which an application has been filed. Should it later appear, however, that there is undue delay in activating the channel in Clayton, we would consider a further petition to remove the channel at Clayton, Louisiana, to accommodate expanded service at Woodville. See *Billings and Lewistown, Montana*, 6 FCC Rcd 3632 (1991).

4. In view of the fact that the proposed allotment would provide expanded service to Woodville, Mississippi, the Commission believes it would serve the public interest to propose amending the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Woodville, Mississippi	299A	299C3
Clayton, Louisiana	300A	---

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before January 3, 1994, and reply comments on or before January 18, 1994, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Donald B. Brady, President
PDB Corporation
141 McTyre
Jackson, Mississippi 39202

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

¹ Although petitioner's request indicates that the original copy of its proposal was signed, it failed to include an affidavit verifying that the statements contained in its petition were accurate to the best of its knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.401(b) of the Commission's Rules concerning rule

making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. See also *Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3911, n.41 (1990). Petitioner is requested to rectify this omission in its comments.

² The coordinates for Channel 299C3 at Woodville are 31-13-43 and 91-07-22.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Victoria M. McCauley
Assistant Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.